DOCUMENT RESUME

ED 467 092 UD 035 122

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TITLE	What Works for the Children? What We Know and Don't Know about Bilingual Education.
INSTITUTION	Harvard Civil Rights Project, Cambridge, MA.
PUB DATE	2002-06-00
NOTE	20p.
AVAILABLE FROM	Civil Rights Project, Harvard University, 124 Mt. Auburn Street, Suite 400 South, Cambridge, MA 02138. Tel: 617-496-6367; Fax: 617- 495-5210; e-mail: crp@harvard.edu; Web site: http:/ /www.law.harvard.edu/ civilrights/. For full text: http:/ /www.civilrightsproject.harvard.edu/ research/bilingual02/bilingual_paper02.pdf.
PUB TYPE	Information Analyses (070)
EDRS PRICE	EDRS Price MF01/PC01 Plus Postage.
DESCRIPTORS	Academic Achievement; *Bilingual Education; *Bilingual Students; Civil Rights; Elementary Secondary Education; *English (Second Language); Equal Education; *Immersion Programs; *Limited English Speaking; Standardized Tests; *Student Evaluation
IDENTIFIERS	Achievement Gap; California; Language Policy

ABSTRACT

Currently, there is no overall strategy for comprehensively addressing the academic needs of English Language Learners (ELLs). Their right to equal opportunities to participate and learn has been recognized by federal law. There is limited evidence regarding bilingual education and effective strategies for educating ELLs. Research indicates that 1 year of English instruction is generally inadequate to prepare ELLs to succeed in general education classes taught only in English. Results from implementing California's 1-year English immersion programs show that these programs are not the success claimed by Unz Initiative proponents. Research indicates that achievement gaps between native English speakers and ELLs are widening, and teachers are seriously demoralized. As a civil rights matter, the future of bilingual education programs for ELLs must depend on the what works for children and not on who makes the decision. One type of support program should not be imposed on all schools. Parents and school districts have the right to implement different bilingual education and language support programs that meet rigorous, broadly accepted standards and local needs. Nine recommendations emphasize the importance of clarifying the goals of language support programs, providing additional high quality instruction for ELLs and additional funding to improve the quality of ELL education. (Contains 75 endnotes.) (SM)

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The Civil Rights Project
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WHAT WORKS FOR THE CHILDREN?
WHAT WE KNOW AND DON'T KNOW ABOUT BILINGUAL EDUCATION

June 2002

I. INTRODUCTION

Currently, no national, state, or local strategy exists for comprehensively and adequately addressing the academic needs of children who are learning English. These children are commonly referred to as Limited English Proficient (LEP) students, English Learners (ELs), or English Language Learners (ELLs).[2] ELLs face very serious barriers to obtaining quality education. Their right to equal opportunities to participate and learn has been recognized by federal law. While research findings have not yet indicated how best to address the achievement problems ELLs face, it is obvious that some type of support must be provided for them to overcome those barriers.

Some of these 4.4 million students[3] receive assistance through well-implemented, successful bilingual education programs; however, many are given inadequate language support. In 1996-1997, over 300,000 of these students were not provided a special language support program.[4] The recently enacted No Child Left Behind Act of 2001 states that one of the purposes of federal assistance for LEPs is to help them attain English proficiency and develop high levels of academic attainment; however, more and more policymakers are moving to set arbitrary time limits for language support.[5] California and Arizona already have passed voter initiatives, commonly known as Unz Initiatives, that limit language assistance to one-year English immersion programs, with sharply limited exceptions. Currently, there are efforts to pass similar voter initiatives in Colorado and Massachusetts.

There is limited evidence and data regarding bilingual education and the most effective strategies for educating ELLs. However, education research is clear: one year of English instruction generally is not enough time to prepare children learning English to succeed in general education classes taught only in English. Acquisition of "playground" English is not the same as acquisition of academic English. Research is also clear that there is no single program or method of teaching that is guaranteed to be most effective in assisting ELLs. Indeed, small ELL populations or particular language minority groups may have very different needs from other ELL populations in a given school district. At a minimum, society should preserve the rights of state and local educators and parents to select from a variety of sound language support programs that are likely to work given the setting, demographics, and resources of a community.

Results on the implementation of California's one-year English immersion programs show that these programs are not the success claimed by Unz Initiative proponents, and some

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research indicates that achievement gaps between native-English speakers and ELLs are widening and that teachers, whose professional rights have been radically limited, are seriously demoralized. As a civil rights matter, the future of bilingual education programs for ELLs must depend on the answer to "what works for the children?" and not on who makes the decision.

> ***As a civil rights matter, the future of bilingual education programs for ELLs must depend on the answer to "what works for the children?" and not on who makes the decision.***

Replacing bilingual education and other language support programs with one-year English immersion programs is a gamble at best. Education "reforms" championed by only a minority of researchers should be adopted in a limited manner, if at all, as a carefully designed research experiment. Only if the new policy proposal is proven effective, should it then be implemented on a broad scale.

In February 2001, The Civil Rights Project at Harvard University convened a roundtable discussion of researchers and civil rights experts to examine language support programs and the validity of arguments about bilingual education that have been advanced in recent policy debates. Upon further study, The Civil Rights Project has concluded that:

- One year is not enough time for students to become proficient in English and providing only one-year English immersion programs for all students learning English is likely to violate current federal law;

- One type of language support program should not be imposed on all schools – parents and local school districts should have the right to implement different bilingual education and language support programs that meet rigorous and broadly accepted research standards of design and effectiveness and are most appropriate for the children in their schools; and

- More effort should be spent on improving the education that ELLs receive than on debating the best type of bilingual education or language support program to implement in all of our schools.

Specific policy recommendations are provided at the end of this paper.

II. OVERVIEW: WHAT'S AT STAKE?

Unquestionably, almost everyone engaged in the bilingual education policy debate wants children to become fluent in English to provide them with access to more opportunities and the ability to participate fully in American society. If everyone agrees that children should learn English, some may wonder why so much energy is spent arguing about bilingual

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education, when only five percent of students are affected and relatively little money is spent on these programs.[6]

The debates over bilingual education are contentious because they have turned into arguments over what type of society America should be, rather than, simply, over what is the best way to help children learn. This shift has distracted educators and policymakers from focusing on the difficult task of implementing high-quality language support programs that effectively improve academic opportunities for ELLs.

The type of language support programs we choose to implement in schools affects our entire population in several respects. Most fundamentally, these policy choices reflect our country=s philosophy about how we should treat immigrants and their children, as well as the value we place on bilingualism. The effectiveness and fairness of those policies will, in turn, be all but decisive factors in the educational achievement of a rapidly growing segment of the population, and therefore, decisive factors in access to economic and social opportunities. If America has an entrenched underclass, defined by language, the injustice may be linguistically and ethnically circumscribed, but the social and economic consequences will be severe for all of us. For most children of immigrants, their first sustained contact with American institutions and the American government is through the public schools. Whether we have bilingual education programs and how we implement them will have long lasting effects on these children and their views toward America. Finally, our language assistance policy in schools will eventually affect our competitiveness in the increasingly global economy because of the growing need for Americans to have multiple cultural and linguistic skills.

If America has an entrenched underclass, defined by language, the injustice may be linguistically and ethnically circumscribed, but the social and economic consequences will be severe for all of us.

The policy debates mainly revolve around several questions:

- What type of program should we provide these children?
- Which programs are effective?
- How long should children be in these programs?

The first step in resolving the policy debate over language support programs is to clarify our goals for these programs. Are we trying to provide students with literacy in English and their primary language? Do we want students to reach the same academic level as native English speakers their same age and grade? Do we want ELLs to attain minimum English proficiency skills in reading, writing, and speaking or only conversational proficiency in English? Do we want to enhance interpersonal relationships and students' abilities to interact with people from different races and ethnicities? Is it some combination of these goals? We urgently need to find answers to these questions because the number of students

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with limited knowledge of English is growing and most of these students are performing below, often significantly below, the academic level of native English speakers.[7]

III. DEFINITIONS

When people discuss *"bilingual education,"* the programs they have in mind range from English as a Second Language (ESL) programs to dual language programs in which native English speakers and children who know another language learn both English and the other language. In this paper, we use "bilingual education" to refer to programs in which children's primary language is used in significant amounts to teach academic subjects. It does not include those programs in which children are taught in English and primary language is used mainly to clarify that instruction. We use the broader terms *"language assistance programs"* or *"language support programs"* to encompass all programs in which primary language is used to assist students.

All would agree that language support programs vary greatly in quality, size, duration, and implementation. Such wide variation makes even beginning the conversation on bilingual education and specific programs difficult because programs with the same name -- "structured immersion" for example -- may have few similarities. We have broadly defined these programs as follows:

1) *English as a Second Language* consists of programs in which students receive specific periods of instruction aimed at the development of English language skills, focusing on grammar, vocabulary, and communication rather than on academic subjects.
2) *Structured immersion*[8] programs provide students instruction in English on English language skills (and in some programs on academic content) with primary language used mainly to clarify the instruction.
3) *Transitional bilingual education* programs allow students to receive some instruction in language skills and on academic subjects in their primary language. As the students progress in English, the programs decrease the amount of instruction in their primary language with the goal of transitioning the students into general education classes as quickly as possible.
4) *Dual language or two-way bilingual programs* combine native English speaking students and ELLs with the goal of developing proficiency in both languages for both groups of students.[9]

Of these programs, we would consider only transitional bilingual education and the dual language programs as "bilingual education."

Another issue that causes confusion in debates about bilingual education policy is that *"proficiency in English"* carries different meanings. Some consider students to be "proficient in English" when they are proficient in conversational skills while others believe that students

have attained English proficiency only when they have appropriate oral, written, and reading skills for native speakers of English of the same age and grade. We use the latter definition for the purposes of this paper.

IV. GENERAL RESEARCH FINDINGS

Approximately nine percent of all students were Limited English Proficient (LEP) in 1999-2000.[10] An overwhelming 77% of LEP students come from low-income backgrounds.[11] They are concentrated in schools that are both linguistically segregated and have comparatively high concentrations of students from low-income families.[12] For example, in California, over one-half of LEP students attended schools in which a majority of students were also LEP in 1999-2000.[13] Nearly 75 percent of LEP students are native Spanish speakers[14] and are concentrated in five states: California, Texas, New York, Florida, and Illinois.[15] Of LEP students, 30% attended secondary school and the remainder attended elementary school in 1999-2000.[16] The number of LEP students is growing, as are the jurisdictions that have some type of bilingual education program.[17] These data suggest that many LEP students must overcome not only language issues in achieving academic success, but also the problems of poor teaching quality, inadequate resources, and deteriorating facilities -- problems that typically plague schools with high concentrations of low-income students.

A. How long does it take for children to learn English?

Researchers agree that the amount of time to obtain proficiency in English depends on multiple factors, including the child's age, level and quality of prior schooling of the child, parent's education level, type and quality of instruction provided, the child=s exposure to English in his or her community, and quality of the teachers.[18] Given all of these variables, some researchers have found that attaining proficiency in English may require as little as two years, while other researchers have found that it may take as long as eight years.[19] The time range is so great, in part, because researchers define "proficiency" differently. Education research generally shows that students learn oral language skills (listening and speaking) fairly quickly, while writing and reading comprehension take longer to develop.[20] Most of the studies generally conclude that attaining proficiency would require some amount of time in the middle of this range. One often-cited study concludes that the amount of time for learners of English to develop parity in language skills and academic achievement with native English speakers is at least five years, a finding that several studies support.[21]

B. What is the best type of language support program?

Research indicates that no one has identified any single program or approach that is a perfect model, or even simply the most effective for all ELLs; indeed, research suggests that several different types of language support programs can be effective. This lack of agreement among researchers is in part the result of wide-ranging differences in implementation essentials, such as teacher quality. Another likely cause of disagreement is the lack of a uniform goal for language support programs. The No Child Left Behind Act of 2001 attempts to create some clarity by stating that the goals of federal assistance is to help ELLs attain

English proficiency, develop high levels of academic attainment, and meet the same academic achievement standards as native English speaking students.[22] Nevertheless, there is still no consensus among policy makers or researchers. If the goals of language support programs were more clearly defined, researchers and educators would be better able to identify and agree upon a model educational approach.

Notwithstanding the definitional differences, a National Research Council report finds that successful programs contain the following elements:

> a supportive school-wide climate, school leadership, a learning environment tailored to local goals and resources, articulation and coordination within and between schools, some use of native language and culture in the instruction of English-language learners, a balanced curriculum that incorporates both basic and higher-order skills, explicit skills instruction, opportunities for student-directed activities, use of instructional strategies that enhance understanding, opportunities for practice, systematic student assessment, staff development, and home and parent involvement.[23]

Important studies have shown that well-designed and well-implemented bilingual education programs result in higher academic achievement and that students in these programs tested as well or better than native English speakers.[24] The 1997 Thomas and Collier study found that bilingual education programs -- i.e., native-language academic instruction -- are the most effective in obtaining high levels of long term academic achievement.[25] Many researchers have found that bilingualism improves cognitive development and most agree that bilingualism does not impair existing cognitive abilities.[26] The National Research Council report concludes: "The beneficial effects of native-language instruction are clearly evident in programs that are labeled "bilingual education," but they also appear in some programs that are labeled "immersion. . . . There is little value in conducting evaluations to determine which type of program is best. The key issue is not finding a program that works for all children and all localities, but rather finding a set of program components that works for the children in the community of interest, given that community's goals, demographics, and resources."[27]

Successful bilingual education programs have been identified by the Northeast and Islands Regional Educational Laboratory at Brown University, Boston College, and the National Association for Bilingual Education. These programs include transitional bilingual education programs in Arizona and Illinois, as well as a number of dual language programs in Maine and Massachusetts.[28] The U.S. Department of Education has highlighted successful bilingual education programs as well, including a transitional bilingual education program in California in which students entering the program scored in the 35th percentile or less on a reading and language arts test and were, on average, at national norms by the end of the fourth grade.[29]

V. RESULTS FROM THE UNZ INITIATIVE IN CALIFORNIA

The generally accepted research findings discussed above have been increasingly questioned because Unz Initiative proponents have claimed that requiring all ELLs to be placed in one-year English immersion programs was successful in California. Proponents argue that ELLs have made dramatic increases on standardized test scores.[30] A closer review of data from California reveals, however, that there is no serious evidence that the Unz Initiative resulted in gains for ELLs and some evidence that achievement gaps are widening.

In 1998, through Proposition 227, Californians voted to implement a structured immersion program in public schools. Proposition 227, sponsored by businessman Ron Unz, sought to eliminate bilingual education programs and mandated structured English immersion programs with the goal of moving ELLs into general education classes after one year. Proposition 203, a similar initiative in Arizona, passed in November of 2000 and was implemented in 2001. Consequently, much of the recent debate and scholarship regarding one-year English immersion programs have focused on student achievement in California.

A. Redesignation Rates

During the Proposition 227 campaign, Ron Unz suggested that bilingual education programs in California were a failure because only about 5% of ELLs learned enough English to be placed in general education classes each year, implying a 95% failure rate.[31] He claimed that many, if not most, ELLs would be able to learn enough English in one year to succeed in general education classes.[32] An examination of post-Proposition 227 redesignation rates[33] suggests that Ron Unz's claims of success are greatly overstated.

At the time Proposition 227 was implemented in California, close to 30% of ELLs were in a bilingual education program and many ELLs were already in structured immersion programs.[34] At the end of the 1997-1998 school year, 7% of ELLs had been "redesignated" as English proficient and had been placed in general education.[35] After the first year of implementation (the 1998-1999 school year), only 7.6% of ELLs were redesignated as English proficient; the most recent data indicate that the rate of redesignation had reached only 9%.[36] An increase of less than 3% in the redesignation rate can hardly be considered a "dramatic" success – even if this labeling rate is, unwisely, considered the paramount measure of program effectiveness.

California State Department of Education regulations require that school districts continue to provide educational services to ELLs until they have attained English proficiency at the same level as an average native English speaker and have made up any other academic gaps due to language barriers.[37] Thus, California ELLs should not be placed in general education classes simply because they have had one year of English instruction. The redesignation rates show that most ELLs have not made a transition to general education classes as expected by the Unz Initiative. Even though the Unz Initiative promised significant change, it appears that no additional efforts are being made and no additional resources are being spent to assist ELLs who have not yet reached English proficiency.[38]

B. Standardized Test Scores

Recent studies of student test scores on the Stanford-9, a standardized test implemented in California, support the conclusion that one-year English immersion programs in California are not the dramatic success claimed by opponents of bilingual education. All of the studies suggest that English immersion programs are not necessarily better than bilingual education programs and a number of studies conclude that bilingual education programs are superior. When those conclusions are considered together with the findings of the studies previously discussed, it is clear that one-year English immersion programs are inadequate and that mandating such programs are not in the best educational interest of ELLs.

Studies have raised concerns that the Stanford-9 scores are not the best measure for evaluating English development and academic achievement of ELL students.[39] Using Stanford-9 scores for evaluating the effectiveness of structured immersion versus bilingual instruction has been questioned because the Stanford-9 was designed to measure academic achievement of *native speakers* of English, not language proficiency of ELLs.[40] Moreover, the comparisons are usually based on percentile ranks, which are relative measures of achievement rather than indicators of reaching certain levels of knowledge or skill.[41] Some reports claiming to show the success of the Unz Initiative compare Stanford-9 percentile ranks across different years.[42] The makers of the test and the California test scores reporting website explicitly caution against making this comparison because it does not account for differences in students tested each year.[43] Lastly, some analyses of scores have used overall averages across different subjects and different grades which the makers of the test also state is an incorrect use of the scores.[44] Despite these limitations in analyzing Stanford-9 data, studies comparing students in bilingual education programs with students in English immersion programs still undermine the claims of Ron Unz and his supporters.

One report compared the Stanford-9 scores of students in schools with "substantial bilingual instruction" with test scores of students at three schools highlighted by proponents of Proposition 227 as models of success, such as the Oceanview school district. It found that "the schools implementing bilingual instruction met or exceeded the performance of all students at the schools used for comparison at most grades . . . ."[45] Another analysis of Stanford-9 scores comes to the same conclusion -- that the test scores do not show that English immersion is a better method of instruction than bilingual education programs. Another report found that students in a number of schools with bilingual education programs did better than students in schools providing instruction only in English on the California Academic Performance Index which is based on Stanford-9 scores.[46] A READ Institute study found that in some of the California school districts that were able to maintain bilingual education programs, "the type of bilingual programs they implemented were no worse than English immersion . . . ."[47] While there was some improvement in some ELLs' test scores, most analyses of Stanford-9 test scores show that all students made similar gains in test scores, signifying there is no evidence of a causal connection between implementation of one-year English immersion programs and improvement of ELL test scores,[48] particularly in light of the significant education reforms, including class-size reductions and changes in the curriculum, implemented in California at that time.[49]

Moreover, an examination of the achievement gap between native English speakers and ELLs shows that the Unz Initiative has not resulted in dramatic gains for ELLs. One study using a different type of analysis of Stanford-9 scores, through weighted means and scaled scores, found that LEP scores remain substantially below English proficient students and that, in general, the gap between these two groups' scores is not narrowing.[50] Another study showed that this testing gap is widening.[51]

C. Teacher Perspectives

A study of teacher perspectives after the second year of implementation of Proposition 227 found that "teachers have witnessed an overall negative effect on second language learners' cultural and linguistic identity and educational future."[52] Many teachers have been demoralized.[53] One teacher stated, "The most difficult thing about Proposition 227 was having educational policies imposed without expertise. This policy is not informed by research. It is hard to accept that someone outside the classroom decides what happens inside, and I can't do what's best for students."[54] Another study found that teachers felt fear, confusion, and frustration during the initial implementation of Proposition 227.[55] For example, one teacher spoke about the transition to an English immersion program:

> Well, I started out the year very uncomfortable . . . I guess at first I was totally paranoid about it and then, you know, I was told that as long as I didn't talk more than 30% of the time in Spanish and as long as I didn't talk to the whole group in Spanish, if I talked to a little group, or to a couple . . . So little by little, I've just kind of weeded out most of the Spanish . . . Back to School Night, I was told you didn't have, should not have anything that was in Spanish . . . half the people who came spoke only Spanish. I spoke to them. When the Superintendent came, I spoke in English. I mean it's just crazy, you know. I'm worried, I guess . . . the whole thing seems totally pointless.[56]

Prevailing research shows that the Unz Initiative was not a dramatic success in California. Because there is no single proven method to assure educational success for ELLs, policymakers should make more efforts to implement the best quality of education for ELLs that addresses the students' needs rather than trying to implement a uniform type of language support program for all students.[57] Researchers generally agree that different types of language support programs can be successful if, like all model educational programs, they are implemented well, have proper resources and quality teachers, and address the cultural and linguistic needs of the students.

VI. LEGALITY OF ONE-YEAR ENGLISH IMMERSION PROGRAMS

The legal requirements regarding language support programs suggest that mandating one-year English immersion programs would be legally impermissible. Because of the landmark case of *Lau v. Nichols*,[58] school districts are required to provide LEP students with equal educational opportunities. In *Lau*, parents of non-English speaking children of Chinese

descent sued the San Francisco school district alleging that their children did not have equal opportunities to learn because they could not access general education instruction and were not receiving any special instruction. The United States Supreme Court held that the school district violated Title VI of the 1964 Civil Rights Act and discriminated on the basis of race and national origin because the Chinese-speaking students were receiving fewer benefits than their English-speaking peers and were denied a meaningful opportunity to participate in the educational program. The Supreme Court found that the school district must take "affirmative steps to rectify the language deficiency in order to open its instructional program to these students."[59]

The Equal Educational Opportunities Act of 1974 (EEOA) codifies the standard set by the Supreme Court in *Lau v. Nichols*. Its main provision requires states and school districts "to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."[60]

Courts that have addressed the issue have employed a three-part test to determine whether a school district has taken "appropriate action to overcome language barriers" under the EEOA.[61] The test requires that the school district=s program for LEP students: 1) be based on sound educational theories, 2) effectively implement the education theories, and 3) produce results showing that language barriers are being overcome.[62]

Strict one-year English immersion programs have not produced uniform results showing that they are efficient or adequate in meeting the educational needs of ELLs and assisting them in overcoming language barriers. One leading researcher on bilingual education has concluded that in order to be based on sound educational theories, a program for ELLs "must include at least some amount of native language support, and [ELLs] should receive some form of special instruction and accommodations for a period of at least 4 to 7 years."[63] This conclusion is supported by the body of education research discussed above.

While the United States District Court for the Northern District of California ruled in *Valeria G. v. Wilson*[64] that Proposition 227 on its face did not violate the EEOA, it is unclear whether another court would make the same finding. The Court in *Valeria G.* only considered the question of whether Proposition 227, no matter how the state or a school district implemented it, would prevent a school from meeting the legal standard of taking appropriate action to overcome ELL language barriers. The Court found that because the initiative was flexible and allowed schools and school districts to make choices about the type of curriculum to implement, a school district could implement its programs in such a way as to constitute "appropriate action" under Section 1703(f) [of the EEOA].[65] The Court based its decision that Proposition 227 did not violate the EEOA, in part, in deference to the defendant's evidence that structured immersion is the "predominant method of teaching immigrant children in many countries in Western Europe, Canada, and Israel."[66]

Courts in California have not yet faced a lawsuit brought on behalf of individual ELLs negatively affected by the actual implementation of Proposition 227, but this type of "as-applied" challenge would likely succeed because a one-year English immersion program is unlikely to provide appropriate educational opportunities that allows all children to overcome

language barriers.

Strict one-year English immersion programs clearly raise significant legal questions and are likely to violate the rights of many children guaranteed under the EEOA.

VII. TESTING ENGLISH LANGUAGE LEARNERS

While we recognize the limitations of using standardized tests, such as the Stanford-9, to measure academic progress of ELLs, we also recognize that evaluative testing of ELLs is necessary to determine how a child is progressing in learning English language skills and gaining academic knowledge. When they first enter a school system, many ELLs are not evaluated to determine their base line of knowledge. Without knowing where a child starts, it is difficult to determine how much progress a child makes during a school year. Appropriate tests given in primary languages need to be developed to assess what knowledge ELLs have upon entering a school system. In addition, more research needs to be performed to develop appropriate evaluative tests of ELLs that takes into account the language and content of instruction that ELLs are provided. Current research generally indicates that for students who are not yet proficient at reading and writing in English but are receiving instruction in English, neither assessment in their native language nor assessment in English will yield reliable and valid results.[67]

Moreover, many of the tests currently used to evaluate academic progress of ELLs are norm referenced tests, meaning that the reported scores, usually a percentile rank, show how well a child is performing in relation to the other children. Usually the tests do not measure attainment of a certain level of knowledge or skill.[68] To attain an average score, ELLs must learn more than the average native English speaker. Only exceptionally bright ELLs are likely to be able to "catch up" in a short period of time. If ELLs are expected to achieve at the 50th percentile, they must be provided additional high quality instruction beyond what general education students are receiving to "catch up" more quickly.[69] Alternately, different tests to measure attainment of certain levels of knowledge or skill should be developed.

Lastly, the decision of whether or not to assess a child in English or to move a child to general education classes should depend on whether a child has reached certain levels of knowledge, rather than on whether he or she has participated in a certain number of years of instruction.[70] Often these decisions are tied to whether a child has been "resdesignated" or "reclassified" as English proficient. A commonly agreed upon standard for determining who should be considered "English proficient" needs to be developed.

Testing and evaluating ELLs is important but must be implemented thoughtfully, and in a way that is most helpful to these children. The use of inappropriate tests and the failure to provide accommodations[71] causes ELLs to receive ineffective instruction, may cause ELLs to be overlooked in receiving needed educational services, and may have serious academic consequences, such as denial of a diploma.[72]

VIII. CONCLUSION

The language support policy we choose to implement in our public schools will have a large impact on improving or impeding the chance of ELLs' academic success. The trend to limit language support for ELLs to one-year English immersion programs raises significant civil rights problems in light of the existing body of educational research. Prevailing research indicates that the claims of success regarding the Unz Initiative in California are overstated. Because research indicates that one year of instruction is not enough time for children to attain English proficiency, one-year English immersion programs should not be imposed on all schools. A child's civil rights should not rest upon dubious research or educational theories even if they are wholeheartedly embraced by political decision-makers or by overly deferential judges. Furthermore, strict one-year English immersion programs are likely to violate current federal law.

Parents and local school districts should have the right to choose different types of bilingual education and language support programs that meet rigorous and broadly accepted research standards of design and effectiveness and that are most appropriate for the children in their schools. Rather than trying to identify and implement the "best" language support program in all of our schools, policymakers and educators should focus their efforts on an overall strategy for improving the education ELLs receive.

Acute challenges associated with improving public education for minority and disadvantaged children continue to exist today. The public school system in the United States is marked by vast inequalities, all too frequently defined along racial and ethnic lines. The trend to limit language support programs should end, and should be replaced by redoubled efforts to provide ELLs with access to equal educational opportunities and sufficient resources that thoughtfully address their linguistic and cultural needs and allow them to reach appropriate levels of knowledge of English and academic subjects.

IX. RECOMMENDATIONS

1. **Make language support programs one part of an overall strategy for improving the quality of education for LEP children.** While it is important to examine the effectiveness of different types of language support programs, it is more important to think broadly about how language support programs fit into an overall strategy for improving the quality of education for LEP children that allows them to reach appropriate levels of knowledge of English and other subjects. For example, ELLs are not well served if a school chooses to implement a bilingual education program, but the schools fail to provide qualified teachers trained to address the students' specific needs.

2. **Give parents and schools the flexibility to implement different types of language support programs.** One-year English immersion programs as implemented in California have not been shown to be a "dramatic" success and some research shows that they have been a failure. Also, implementing strict

one-year English immersion programs is likely to violate current law. Requiring all schools to implement one type of language support program, takes away from parents and educators the choice of how best to teach ELLs in their schools. Parents should have the right to choose and school districts should offer different types of language support programs that have met rigorous and broadly accepted research standards of design and effectiveness. They should be able to choose the most appropriate programs for the children in their schools, and strategies for addressing the education of different language minorities in their communities.

3. **Clarify the goals of language support programs**. Once policy makers have clarified the goals and desired outcomes for language support programs, schools can align their instruction accordingly. The No Child Left Behind Act of 2001 has clearly described the goals of federal assistance as helping ELLs attain English proficiency, attain high levels of academic attainment, and meet the same academic achievement standards as native English speaking students.[73]

4. **Support the use of academic or literacy measures to determine when children should be moved from bilingual education or other language support program to general education classes rather than through the use of time limits**. Currently most children transition from bilingual education in four years,[74] but what children know when they leave bilingual education programs varies. Children should attain certain academic or literacy measures before they are moved to general education classes and no longer considered LEP.

5. **Hold schools and school districts accountable for ensuring improved academic achievement of ELLs measured by appropriate knowledge of English, consistent academic achievement over time, improvement in diagnostic test scores, and improvements in graduation rates**. Schools and school districts should be required to report disaggregated statistics regarding ELLs and to track the achievement of ELLs after they have been redesignated or reclassified as "English proficient" to ensure they are not systematically falling behind native English speakers as they progress in school.

6. **Provide additional high quality instruction for ELLs**. ELLs are unlikely to outperform native English speakers and learn enough to achieve at the same level as average native English speakers without additional, enriched, and/or accelerated curriculum.

7. **Provide additional funding to improve the quality of education for ELLs**. Priority for funding should be given to those schools with the greatest needs and those able to provide the most successful and highest quality bilingual education programs.

8. **Support additional research to evaluate language support programs, to develop appropriate tests to measure ELL achievement, and to evaluate effective testing accommodations for ELLs.** Additional social science research is necessary to identify effective language support programs and to evaluate the long-term effects of different programs and models, particularly English immersion programs. Appropriate assessments that measure ELL academic achievement as well as English language development need to be created. These assessments should parallel instruction and to the extent necessary should be given in a student's primary language to measure academic achievement. Additional research to develop academic and literacy benchmarks for ELLs at different ages, grades, and literacy levels is necessary, as is the research regarding effective testing accommodations for ELLs.[75]

9. **Use sound education research to influence policymakers through advocacy and litigation.** Researchers and attorneys must work together with those concerned about racial and ethnic justice to challenge misguided prescriptions. In particular, community leaders should become informed about research evidence and best practices regarding the most effective means to improve ELL academic achievement, and insist that school officials and school board members become similarly knowledgeable. When necessary, aggressive challenges to poor performing bilingual education programs and so-called reforms should be brought on behalf of the affected children. This should include litigation to enforce federal laws and Constitutional provisions, which courts have already interpreted to require well-founded educational strategies to remove language barriers preventing equal participation by ELLs.

ENDNOTES

[1] This report was prepared by Jacinta Ma, Legal and Advocacy Policy Associate of The Civil Rights Project. She would like to thank Patricia Gandara, Kenji Hakuta, Catherine Snow, and the staff of The Civil Rights Project for their input and assistance.

[2] Researchers and educators are increasingly using the terms ELL or EL and many governmental agencies use LEP.

[3] Anneka Kindler, National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs (formerly the National Clearinghouse for Bilingual Education), *AskNCBE No. 1: How many school-aged limited English proficient students are there in the U.S.?* (2002) (citing National Center for Bilingual Education *Survey of the States' Limited Proficient Students and Available Educational Programs and Services, 1999-2000 Summary Report (Forthcoming)), available at* http://www.ncbe.gwu.edu/askncbe/faqs/01leps.htm.

[4] National Clearinghouse for Bilingual Education, *Summary Report of the Survey of the States' Limited English Proficient Students and Available Educational Programs and Services 1996-1997*, tbl. A9 (Students Enrolled in Special Programs, by Type of School and by State, 1996-1997) (1998), *available at* http://www.ncbe.gwu.edu/ncbepubs/seareports/96-97/a9.htm.

[5] For example, during the reauthorization of the Elementary and Secondary Education Act, President Bush first proposed that ELLs be taught only in English after three consecutive years in school.

[6] In 1997, 36.6 billion federal dollars were spent on all elementary and secondary education programs and only 225 million or 0.6% of those dollars were spent on bilingual education programs. U.S. Department of Education, National Center for Education Statistics, *Federal Support for Education: Fiscal Years 1980 to 1997* (1997). More recently, the Bush Administration requested $18.6 billion for programs administered by the Department of Education's Office of Elementary and Secondary Education, and of that amount, only $460 million or 0.25% would be spent on bilingual education programs. Thomas M. Corwin, Acting Deputy Assistant Secretary for Elementary and Secondary Education, Statement Before the U.S. House of Representatives Subcommittee on Labor, Health and Human Services, and Education Appropriations on the Fiscal Year 2002 Request for Elementary and Secondary Education (April 26, 2001), *available at* http://www.ed.gov/offices/OUS/Budget02/02oese.html); and Arthur Love, Acting Director, Office of Bilingual Education and Minority Languages Affairs, Statement Before the U.S. House of Representatives Subcommittee on Labor, Health and Human Services, and Education Appropriations (April 26, 2001), *available at* http://www.ed.gov/offices/OUS/Budget02/02obemla.html.

[7] National Clearinghouse for Bilingual Education, *supra* note 4, at tbl. A8 (LEP Students Scoring Below State Norms, By State, 1996-1997) (1998), *available at* http://www.ncbe.gwu.edu/ncbepubs/seareports/96-97/a8.htm.

[8] Structured immersion is sometimes referred to as sheltered instruction or bilingual immersion.

[9] For definitions of different types of bilingual education programs, see National Research Council, *Educating Language-Minority Children* 6 (Diane August & Kenji Hakuta eds., 1998); Christine Rossell & Keith Baker, *Abstract of Bilingual Education in Massachusetts: The Emperor Has No Clothes* 2-8 (1996) *available at* http://www.pioneerinstitute.org/research/piopaper/summ10.cf; and Wayne P. Thomas & Virginia Collier, *School Effectiveness for Language Minority Students*, 9 *National Clearinghouse for Bilingual Education Resource Collection Series* 58 (1997), *available at* http://www.ncbe.gwu.edu/ncbepubs/resource/effectiveness/index.htm.

[10] Anneka L. Kindler, National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs, *Survey of the States' Limited English Proficient Students & Available Educational Programs and Services: 1999-2000 Summary Report* 2 (2002), *available at* http://www.ncbe.gwu.edu/ncbepubs/seareports/99-00/sea9900.pdf [hereinafter *NCELA 1999-2000 Summary*

Report].

[11] As defined by those students eligible for free and reduced lunch. *Educating Language-Minority Children, supra* note 9, at 5.

[12] *See Educating Language-Minority Children, supra* note 9, which cites a study suggesting that between 40-50 percent of limited English proficient students attend schools in which the student population is between 75-100 percent low income. *Id.*

[13] Patricia Gandara & Russell Rumberger, *The Inequitable Treatment of English Learners in California's Public Schools* 4 (2002) (unpublished manuscript, on file with The Civil Rights Project). Nationally, almost one-half of all LEP children attended schools in which nearly one-third of the students were also LEP and almost one-third of LEP children attended schools in which one-half or more of the students were LEP in 1993-1994. Jorge Ruiz-de-Velasco & Michael Fix, Urban Institute, *Overlooked & Underserved: Immigrant Students in U.S. Secondary Schools* 14, 30 (2001).

[14] *Educating Language-Minority Children, supra* note 9, at 4.

[15] According to the 1990 census over 67 percent of LEP children resided in California, Texas, New York, Florida, and Illinois. *Educating Language-Minority Children, supra* note 9, at 4.

[16] *NCELA 1999-2000 Summary Report, supra* note 10.

[17] Love, *supra* note 6; *NCELA 1999-2000 Summary Report, supra* note 10.

[18] United States General Accounting Office, *Public Education: Meeting the Needs of Students with Limited English Proficiency* 15 (2001).

[19] *Id.* at 5-6.

[20] Patricia Gandara, *Review of Research on the Instruction of Limited English Proficient Students: A Report to the California Legislature*, University of California Language Minority Institute 5, 12 (1999), *available at* http://www.lmri.ucsb.edu/resdiss/pdf_files/Gandara.pdf [hereinafter *Gandara Review*].

[21] Wayne P. Thomas & Virginia Collier, *supra* note 9. See also, Kenji Hakuta, Yuko Goto Butler, & Daria Witt, *How Long Does it Take English Learners to Attain Proficiency?*, 1 University of California Linguistic Minority Research Institute Policy Report (2000) (unpublished manuscript, *available at* http://www.stanford.edu/~hakuta/Docs/HowLong.pdf); *Gandara Review, supra* note 20, at 8-13.

[22] 20 U.S.C. § 6812 (2002).

[23] *Educating Language-Minority Children, supra* note 9, at 72.

[24] Kenji Hakuta, Testimony to the United States Commission on Civil Rights: The Education of Language Minority Students (April 13, 2001), *available at* http://www.stanford.edu/~hakuta/Docs/CivilRightsCommission.htm [hereinafter *Hakuta Testimony*]; Jay P. Greene, *A Meta-Analysis of the Effectiveness of Bilingual Education* (1998), *available at* http://ourworld.compuserve.com/homepages/JWCRAWFORD/greene.htm; Wayne P. Thomas & Virginia Collier, *supra* note 9; A.C. Willig, *A Meta-Analysis of Selected Studies on the Effectiveness of Bilingual Education*, 55 (3) *Review of Educational Research* 269-317 (1985).

[25] Wayne P. Thomas & Virginia Collier, *supra* note 9, at 52-68.

[26] *Educating Language-Minority Children, supra* note 9, at 11-20; Hakuta *Testimony, supra* note 24.

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[27] *Educating Language-Minority Children*, *supra* note 9, at 54.

[28] The Northeast and Islands Regional Educational Laboratory, The Education Alliance at Brown University, *Portraits of Success*, *at* http://www.lab.brown.edu/public/NABE/portraits.taf.

[29] U.S. Department of Education, Office of Bilingual Education and Minority Language Affairs, *Frequently Asked Questions*, *at* http://www.ed.gov/offices/OBEMLA/q_a1.html#q9.

[30] For example, see Ron Unz, *Huge Rise in Statewide California Immigrant Test Scores* (2000), *available at* http://www.unz.org/notes/081500.html.

[31] For example, see Ron Unz, *Bilingualism v. Bilingual Education*, L.A. TIMES, Oct. 19, 1997, at M5, *available at* http://www.onenation.org/article.cfm?id=2263.

[32] *See, e.g.*, Nick Anderson, *Bilingual Debate Comes to L.A. Education: Ron Unz, Backer of Initiative that Calls for Instruction in English, Speaks to State Senate Panel*, L.A. TIMES, Dec. 3, 1997 at A3.

[33] Redesignation rates are not the best measure of the success of any language support program because the California data does not provide information about the rate of redesignation based on program or length of time in a program and only measures the number of redesignated ELLs compared to the number of ELLs the previous year.

[34] *Gandara Review*, *supra* note 20, at 1-2; Patricia Gandara, *In the Aftermath of the Storm: English Learners in the Post-227 Era*, 24 (1& 2) *Bilingual Research Journal* (2000), *at* http://www.brj.asu.edu/v2412 [hereinafter *In the Aftermath of the Storm*].

[35] Gandara, *In the Aftermath of the Storm*, *supra* note 34, at 2; California Department of Education, DataQuest (1997-2001), Sacramento, California: California State Department of Education, *at* http://data1.cde.ca.gov/dataquest/.

[36] California State Department of Education, *supra* note 35.

[37] CAL. CODE REGS., tit. 5, § 11302 (2002).

[38] *See generally* Gandara & Rumberger, *supra* note 13.

[39] Yuko Goto Butler, Jennifer Evelyn Orr, Michele Bousquet Gutierrez, & Kenji Hakuta, *Inadequate Conclusion from an Inadequate Assessment: What Can SAT-9 Scores Tell Us About the Impact of Proposition 227 in California?* 24 (1 & 2) Bilingual Research Journal (2000), *available at* http://www.brj.asu.edu/v2412/; Thomas Parrish, *Effects of the Implementation of Proposition 227 on the Education of English Learners, K-12: Year 1 Report* (2001), *at* http://lmri.ucsb.edu/resdiss/2/prop227.htm; Marilyn S. Thompson, Kristen E. DiCerbo, Kate Mahoney & Jeff MacSwan, *Exito en California?: A Validity Critique of Language Program Evaluations and Analysis of English Learner Test Scores* 20, 10 *Education Policy Analysis Archives* 7 (2002), *at* http://epaa.asu.edu/epaa/v10n7/. See also, Gandara, *In the Aftermath of the Storm*, *supra* note 34.

[40] Butler et al., *supra* note 39.

[41] Thompson et al., *supra* note 39.

[42] *Id.*

[43] *Id.*

[44] *Id.*

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[45] Californians Together, *Schools with Large Enrollments of English Learners and Substantial Bilingual Instruction are Effective in Teaching English* (2000), *available at* http://www.californiatomorrow.org/files/pdfs/CT_8-00_report.pdf.

[46] Norm Gold, *Bilingual Schools Make Exceptional Gains on the State's Academic Performance Index (API)* (2000), *available at* http://www.californiatomorrow.org/files/pdfs/api_report__12_8_f.PDF.

[47] Jorge Amselle & Amy Allison, The READ Institute, *Two Years of Success: An Analysis of California Test Scores After Proposition 227* (2000), *available at* http://www.ceousa.org/html/227rep.html.

[48] Butler et al., *supra* note 39; Stephen Krashen, *Why did Test Scores Go up in California? A Response to Unz/Reinhard* (2001), *available at* http://ourworld.compuserve.com/homepages/JWCRAWFORD/Krash10.htm); *see also* Gandara, *In the Aftermath of the Storm*, *supra* note 34 .

[49] Gandara, *In the Aftermath of the Storm*, supra note 34.

[50] Thompson et al., *supra* note 39.

[51] Gandara, *In the Aftermath of the Storm*, *supra* note 34, at 11.

[52] Laura Alamillo and Celia Viramontes, *Reflections from the Classroom: Teacher Perspectives on the Implementation of Proposition 227* 12, 24 (1& 2) *Bilingual Research Journal*, (2000), *at* http://brj.asu.edu/v2412/articles/ar11.html.

[53] *Id.*

[54] *Id.* at 1.

[55] Patricia Gandara, Julie Maxwell-Jolly, Eugene Garcia, Jolynn Asato, Kris Gutierrez, Tom Stritikus, & Julia Curry, *The Initial Impact of Proposition 227 on the Instruction of English Learners*, University of California Language Minority Research Institute 18-32 (2000), *available at* http://lmri.ucsb.edu/resdiss/pdf_files/prop227effects.pdf.

[56] *Id.* at 24.

[57] *See, e.g.*, Charles L. Glenn, The READ Institute, *What Does the National Research Council Study Tell Us About Educating Language Minority Children?* 11 (1997), *available at* http://www.ceousa.oprg/READ/nrc.html; *Hakuta Testimony*, *supra* note 24.

[58] 414 U.S. 563 (1974). The Supreme Court held "there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education." *Id.* at 566.

[59] *Id.* at 568.

[60] 20 U.S.C. § 1703(f).

[61] *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981).

[62] *Id.*

[63] *Hakuta Testimony*, *supra* note 24, at 2.

[64] 12 F.Supp. 2d 1007 (N.D. Cal. 1998).

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[65] *Id.* at 1019.

[66] *Id.* at 1018.

[67] *See* National Research Council, *High Stakes: Testing for Tracking, Promotion and Graduation*, 225-26, (Jay P. Heubert & Robert M. Hauser eds., 1999) [hereinafter *High Stakes*]; Thompson et al., *supra* note 39.

[68] *Gandara Review*, *supra* note 20, at 13-14. Thompson et al., *supra* note 39, at 16-17.

[69] *Gandara Review*, *supra* note 20, at 13-14.

[70] *See High Stakes*, *supra* note 677, at 229.

[71] *See, e.g.*, Francis Butler & Robin Stevens, *Accommodation Strategies for English Language Learners on Large-Scale Assessments: Student Characteristics and Other Considerations*, National Center for Research on Evaluation, Standards, and Student Testing (1997); National Center for Education Statistics, *The Inclusion of Students With Disabilities and Limited English Proficient Students in Large-Scale Assessments: A Summary of Recent Progress* (1997). One result is that LEP students are substantially less likely than non-LEP students to finish high school. *See* Jennifer van Hook & Michael Fix, *A Profile of Immigrant Children in U.S. Schools* 16, *in* OVERLOOKED AND UNDERSERVED (Jorge Ruis-de-Velasco & Michael Fix eds., 2000).

[72] *See Hakuta Testimony*, *supra* note 24.

[73] 20 U.S.C. § 6812.

[74] United States General Accounting Office, *supra* note 18, at 20-21 (which found that in the six states keeping track of the length of time LEP children spent in bilingual education programs, the majority of children transitioned from bilingual education in four years or less). See also, Hakuta et al., *supra* note 21.

[75] National Research Council, *Testing English-Language Learners in U.S. Schools* 27 (Kenji Hakuta & Alexandra Beatty, eds., 2000).

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